

## A MAN AND HIS NAME.

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From the days of the Hebrews to the present day, the name has been regarded as a man's most characteristic possession and as that which differentiates him from all other persons and enables his fellowmen to know him.<sup>1</sup> It might seem, at first sight, that a man's right to use it is indefeasable in all cases, and it is usually held that the very use of it shows an intent not to deceive.<sup>2</sup> But even this peculiar possession cannot be used, so as to palm off one man's goods as those of another,<sup>3</sup> and the possession of a name the same as or similar to that of another tradesman<sup>4</sup> may impose a peculiar responsibility upon one to see that he does not deceive the public and commit a fraud upon his neighbor. The use of one's own name may be one of those accumulated resemblances which amount to dressing up goods.<sup>5</sup> One man cannot have exclusive right to the use of his name, as against another person

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1. Interesting magazine articles on the subject are found in 8 Alb. L. J., 101 and 8 Alb. L. J. 155, 24 Sol. J., 605, 627, 647, 660. *Hembold v. Hembold*, 53 How. Pr. 453.

2. *Lewis v. Klapproth*, 11 V. L. R. 214; *Parsons v. Gillespie*, 17 N. S. W. Rep. Eq. 227; *Johnson v. Parr*, Russ. Eq. Dec. 98.

3. *Goodyear v. Goodyear*, 45 Off. Gaz. 122 (Sup. Ct.).

4. An early case (1824) is *Sykes v. Sykes*, 3 B. & C. 541. See *Christie v. Christie*, 42 L. J. Ch. 261, 544; *Baker v. Baker*, 78 Off. Gaz. 1427; *Baker v. Baker*, 87 Fed. 209; *Allegretti v. Allegretti*, 177 Ill. 129; *Canada Pub. Co. v. Gage*, 11 Ont. A. R. 402 on app. 11 Can. S. C. R. 306; *Garrett v. Garrett*, 79 Off. Gaz. 1681; *Croft v. Day*, 7 Beav. 84.

5. *Holloway v. Holloway*, 13 Beav. 209; *Taylor v. Taylor*, 23 Eng. L. & Eq. R. 281.

of the same name,<sup>6</sup> unless the latter's use is calculated to deceive and some contract relation, or other estoppel, has deprived the latter of what would be otherwise his right. If the name is honestly used,<sup>7</sup> it may be hurtful to the trade of another which has begun earlier than the trade of the user of the name, and yet that hurt will be *damnum absque injuria*.<sup>8</sup> The tradesman is "no more liable for the incidental damage he may do a rival in trade than he would be for injury to his neighbor's property, by the smoke issuing from his chimney." Without fraud or express agreement, any one may use his name as he will,<sup>9</sup> for *qui jure suo utitur nullum damnum facit*. He must not, of course, resort to any artifice calculated to mislead as to the identity of the business, or article produced,<sup>10</sup> and thus work injury, beyond what results from the mere similarity of names. It has been held that the courts will not presume anything in favor of the person demanding relief from the competition of a man bearing the same name.<sup>11</sup>

"The manner of using the name is all that would be enjoined, not the simple use of it, for every man has the absolute right to use his own name in his business, even though he may thereby interfere with or injure the business of another person bearing the same name, provided he does not resort to any artifice, or contrivance, for the purpose of producing the impression that the establishments are identical, or do anything calculated to mislead."<sup>12</sup> "Neither<sup>13</sup> authority nor reason are in support of the doctrine that the fair honest use of a name can be enjoined, when it is

6. *Hegeman v. Hegeman*, 8 Daly 1; *Gilman v. Hunnewell*, 122 Mass. 139; *Wolfe v. Burke*, 7 Lansing 151; *Caswell v. Hazard*, 121 N. Y. 481, 50 Hun 230; *Landreth v. Landreth*, 29 Off. Gaz. 1131; *Scott v. Scott*, 58 N. Y. Super. Ct. 380; *Marshall v. Pinkham*, 52 Wis. 572; *De Long v. De Long*, 39 N. Y. Supp. 903, 74 Off. Gaz. 809, 811; *Chickering v. Chickering*, 120 Fed. 69; *Richmond v. Richmond*, 52 Off. Gaz. 306.

7. *Higgins v. Higgins*, 144 N. Y. 462.

8. *Brown v. Meyer*, (Sup. Ct.) 55 Off. Gaz. 287.

9. *Knoedler v. Glaenzer*, 47 Fed. 465, 55 Fed. 895.

10. *Wolmershausen v. Wolmershausen*, (1892) W. N. 87; *Newman v. Newman*, cited in 9 Ch. D. 560; *Peck v. Peck*, 113 Fed. 291; *Chivers v. Chivers*, 17 R. P. C. 420; *Royal Co. v. Royal*, 122 Fed. 337; *Russia Cement Co. v. Le Page*, 44 Off. Gaz. 823, 51 Fed. 941.

11. *Cutter v. Gudebrod*, 55 N. Y. Supp. 298. See *Dewar v. Dewar*, 17 R. P. C. 341 (Scotch). See *Hazleton v. Hazleton*, 137 Ill. 231, 142 Ill. 494.

12. *Meneeley v. Meneeley*, 1 Hun 367, 62 N. Y. 427; *England v. N. Y. Pub. Co.*, 8 Daly 375; *Employer's Corp. v. Employer's Co.*, 24 Abb. N. C. 368. *Allegretti v. Keller*, 85 Fed. 643; *Rogers v. Simpson*, 54 Conn. 527.

13. *Rogers v. Rogers*, 53 Conn. 121.

used in the ordinary course of business, in the way and manner in which other manufacturers of similar goods are accustomed to use their own name in the preparation for sale—or sale—of goods.” “Equity will direct how a man should use his name, in his purpose to denote his individuality. He will not be allowed to so use his name as to work an injury to another, having the same name, nor to perpetrate a fraud upon the public.”<sup>14</sup> Let us take up the cases in which the tradesman has been allowed to use his own name in spite of the fact that a rival had the same name. One Burgess<sup>15</sup> was allowed in England to sell “Burgess’ Essence of Anchovies,” which name was rightfully used by the plaintiff, but not to say “late of 107 Strand,” which was the plaintiff’s address, by whom the defendant had formerly been employed as a clerk. “Dewar’s Whisky” was allowed to be sold as such,<sup>16</sup> especially since the defendant also used the distinctive word “Scotsman” with his own. So an English chemist, named Swift, secured a statement from the court that he might rightly make Swift’s Specific.<sup>17</sup> J. Milbourn, a former partner in the firm of J. Milbourn & Co., was permitted, after dissolution of the firm, to open business next door to the old shop under his own name.<sup>18</sup> John Turton had been a steel manufacturer, took his sons into partnership, under the firm style of John Turton & Sons, and was not restrained, though sued by Thomas Turton & Sons, who had been in the same business for many years.<sup>19</sup> Richter was employed by the plaintiff for eight years to conduct concerts, and then made a contract with another manager, who advertised Richter Concerts.<sup>20</sup> The court refused to protect the plaintiff, as there was no proof that the term had become disassociated from Richter. S. Chivers & Son, who made Chivers’ Jelly,<sup>21</sup> had no remedy against S. Chivers & Co., who made Cardiff Jelly at the town of that name. The fact that the plaintiff was the only manufacturer of that name, prior

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14. *Baker v. Baker*, 78 Off. Gaz. 1421; *Melachrino v. Melachrino*, 4 R. P. C. 215; *Stuart v. Stuart*, 85 Fed. 778, 91 Fed. 243.

15. *Burgess v. Burgess*, 17 Eng. L. & Eq. 257.

16. *Dewar v. Dewar*, 17 R. P. C. 341 (Scotch).

17. *Swift Re*, 8 R. P. C. 352.

18. *Bond v. Milbourn*, 20 W. R. 197.

19. *Turton v. Turton*, 42 Ch. D. 128. So a man named Lazenby was allowed to use his name in partnership title; *Lazenby v. White*, 41 L. J. Ch. 354.

20. *Franke v. Chappell*, 57 L. T. N. S. 141.

21. *Chivers v. Chivers*, 17 R. P. C. 420.

to the defendant's beginning business, did not give him a "monopoly of his surname."<sup>22</sup> It is not law that, because your goods may be mistaken for another's, you must take extra precautions to prevent such mistake. You must do something more than merely use your own name, to cause restraint; and the use of *publici juris* characteristics such as tin cans of a certain size, is not enough more. So there was no remedy given in a case where it was shown that one trader put Jamieson & Co., and another put George Jamieson on cans of harness composition, there being also two other Jamiesons making the same goods in Aberdeen,<sup>23</sup> where both parties to the suit had their establishments. Valentine & Co. removed from their old location and two other men of the same name set up in the same storeroom and the same business as J. Valentine & Co. The Irish court refused to enjoin them therefor, as the defendants had been in the same business before, had used a "literally true and correct description of themselves as a business firm" and the plaintiff showed no acts complained of besides the use of the name.<sup>24</sup>

In the United States, the defendants in a number of similar cases have been exonerated from blame.<sup>25</sup> Thus Cutter, a son of the plaintiff's predecessor, was allowed to distill Cutter's Whisky, which name the plaintiffs still used. The Prince Brothers, trading as the Carbon Metallic Paint Company, were not restrained, at the suit of the makers of Prince's Metallic Paint, from calling their goods Prince Brothers Iron Ore Paint.<sup>26</sup> Hiram Duryea sold out his starch business to the complainant in 1890 and agreed that he would not use his name in the business for five years. After the expiration of that time, two of his sons, with other persons, began to sell starch as Duryea & Co., using capital furnished by their father, and no injunction was given against this incidental injury to the complainant's business.<sup>27</sup> The producer of

22. See *Valentine v. Valentine*, 31 Ir. L. R. 488. Fact that scale of prices was the same did not prove fraud.

23. *Jamieson v. Jamieson*, 15 R. P. C. 169. Claimant used horse on label, defendant did not. *Cash v. Cash*, 19 R. P. C. 181 reversing 18 R. P. C. 213. J. & J. Cash, Ltd., could not restrain Joseph Cash & Co., Ltd., from using their name.

24. *Valentine v. Valentine*, 31 Ir. L. R. 488. See 17 R. P. C. 1 and 673.

25. *Rogers v. Rogers*, 70 Fed. 1019. See *Rogers v. Rogers*, 53 Conn. 121; *Rogers v. Rogers*, 84 Fed. 639; *Hardy v. Cutter*, 3 Off. Gaz. 468.

26. *Prince v. Carbon Etc. Co.*, Dig. 573.

27. *National Starch Co. v. Duryea*, 79 Fed. 651 (C. C. A.) 91 Off. Gaz. 2373. Defendant company need not name the other partners.

Landreth's Extra Early Peas could not prevent another Landreth from using his name, with the same descriptive words, provided he clearly informed the public that the peas were of his own growth.<sup>28</sup> The fact that the defendant is a *bona fide* manufacturer of goods and not an indifferent person, who happens to have the same name as the plaintiff, is one of importance. Eli Pettijohn made rolled wheat and then came to Minnesota, where his son had formerly had a similar business, bought the son's machinery and resumed business together with others as the Eli Pettijohn's Cereal Co. and was sustained in his right to his name. He had placed his picture on the wrapper of his goods, so the "personality of this man, as distinguished from any other Pettijohn, is made as pronounced as possible."<sup>29</sup> He called his goods Eli Pettijohn's Best and this is a comparison of the product with other like products made, formerly or contemporaneously, by Eli Pettijohn himself and not by any other manufacturer of that name.<sup>30</sup> Johann H. Faber can not be prevented by A. W. Faber from placing his full name on pencils.<sup>31</sup> Decker & Barnes can make Decker Pianos, in spite of the protests of Decker Brothers.<sup>32</sup> E. G. Blakeslee and his sons may carry on Blakeslee & Sons Iron Works, though they are rivals to the Blakeslee Manufacturing Co.<sup>33</sup> John W. Scott sold his business to the Scott Stamp and Coin Co., Ltd., and agreed not to engage in the postage stamp business for two years.<sup>34</sup> At the end of that time he resumed business, rightfully, as J. W. Scott Co., Ltd. Where a man named Clark engages in the manufacture of spool cotton, he may not restrain the defendants, one of whom is named Clark, from placing that name on similar goods,<sup>35</sup> and so J. & P.

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28. *Landreth v. Landreth*, 29 Off. Gaz. 1131.

29. *American Cereal Co. v. Pettijohn*, 72 Off. Gaz. 903, 76 Fed. 372. See *Davey v. Davy*, 50 N. Y. Supp. 161.

30. See *von Faber v. Faber*, 124 Fed. 603.

31. *Faber v. Faber*, 3 Abb. N. S. 115, 49 Barb. 357.

32. *Decker v. Decker*, 54 How. Pr. 218.

33. *Blakeslee v. Blakeslee*, 58 N. Y. Super. Ct. 383.

34. *Scott v. Scott*, 58 N. Y. Super. Ct. 380.

35. *Harrison v. Holland*, 46 Atl. 271. Neither could call goods genuine. *Contra* where defendant was fraudulent. *Clark v. Armitage*, 67 Fed. 896, 76 Off. Gaz. 1419.

Coats,<sup>36</sup> who were also engaged in the manufacture of spool cotton, could not enjoin J. & T. Coats' successors from using their name. Meneely made bells<sup>37</sup> and was succeeded by Andrew Meneely's Sons, the plaintiffs, to whom he left the exclusive use of his name, but no injunction was given against another son, who cast bells in the same town, Troy, under the partnership name of Meneely & Kimberly. A man and his son were both named Henry Carter.<sup>38</sup> The father changed his name to Frank Leslie, and the son was then known as Frank Leslie, Jr. Afterwards, by the father's threats and a supposed order of court forbidding him to use that name, the son changed his signature to Henry Leslie, but his wife and other relatives still knew him as Frank. On finding there was no order of court, he resumed the old style and published Frank Leslie, Jr.'s *Sporting & Dramatic Times*, a different sort of paper from any published by his father, and was not enjoined for the use of the name. The widow and children of William Bingham were not restrained from carrying on a school under his name at Mebane, North Carolina, at the suit of one who carried on the Bingham School at Asheville. The fact that there had been a break in the operation of a school long carried on at a place by persons of one family does not forbid the right of the proper representatives of that family from reviving the school at that place and under the former name, though another member of the family during the cessation opened a school under the family name in another part of the state.<sup>39</sup> Hiram and Noah Piper carried on business in Canada as H. Piper & Brother.<sup>40</sup> Later Hiram was in business alone and

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36. *Coats v. Platt*, 17 Leg. Int. 213. Of defendants: John was a minor son and a surgeon and so placing his name first was unusual, but the practice had not been restrained in Scotland, where the parties lived, and the New York courts did nothing to check defendants, though their conduct "trode on the verge of the law." So in *Comstock v. Moore*, 18 How. Pr. 421, defendant was allowed to style his firm A. J. White & Co., when White was a member of it, though that firm name existed when the plaintiffs were partners in the firm. Again in *Fite v. Dorman*, 57 S. W. 129, the defendant, who had sold plaintiff his business without use of his trade name, was allowed to form a corporation with his name as a prominent element in the corporate name. In *Marshall v. Pinkham*, 52 Wis. 572, Marshall's father made goods from a recipe which he gave to various members of the family, permitting them to sell the articles for their benefit and the son was not allowed to enjoin the other children or their assigns from calling the goods Marshall's.

37. *Meneely v. Meneely*, 1 Hun 367, 62 N. Y. 427.

38. *England v. N. Y. Pub. Co.*, 8 Daly 375.

39. *Bingham v. Gray*, 122 N. C. 243.

40. *Atkins v. Piper*, 15 Gr. U. C. Ch. 581.

then assigned business and name to a tradesman, who was given no remedy against Noah's sons, one of whom was named Henry and who opened business next door to the assignee as H. Piper & Co.

A bankrupt may usually make use of his name, if he resumes business, especially when the purchaser under the assignment does not use that name.<sup>41</sup> Prince had a mine whence he made metallic paint. He formed a corporation which failed. Then the successors, who called themselves Prince's Metallic Paint Co., unsuccessfully sued Prince's sons who bought from a judgment creditor old trademark rights, half the old mill and the ore and called themselves Prince Manufacturing Co.<sup>42</sup> Tarrant, Williams & Co.<sup>43</sup> sold their business and goodwill, but not the use of their trade name, to a firm which failed to restrain three men from subsequently doing business in their own names as Tarrant, Williams & Clark. There might be confusion, but there was no fraud. Horton was formerly in the firm of T. Horton & Co., and, after he retired, the business was removed from Indiana to New York and the name was made Horton Manufacturing Co., with his consent. Afterwards the business was incorporated. He later began business again in Indiana as T. Horton & Co. and was succeeded by the Horton Manufacturing Co., to which he expressly granted the right to use his name. The Federal court held that the new organization had a right to the name, as the consent without consideration to the old one was probably a mere license revocable at pleasure, and, in any case, could not be properly transferred to another company or to a corporation without Horton's consent.

A man might willingly forego the use of his name in favor of an ordinary partnership, but from such grant could not reasonably be inferred an intention to authorize a transfer whereby a man might be perpetually deprived of the control of his own name.<sup>44</sup> In the United States, probably the most interesting cases are the Baker ones.<sup>45</sup> Walter Baker of Dorchester, Mass., whose business was established in 1780, made preparations of chocolate. In 1894, one William H. Baker, of Winchester, Va., whose family had become established in mercantile business in 1785,

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41. *Iowa Seed Co. v. Dorr*, 70 Iowa 481.

42. *Prince v. Prince*, 57 Fed. 938.

43. *Williams v. Tarrans*, 78 Off. Gaz. 1233.

44. *Horton Co. v. Horton Co.*, 18 Fed. 816.

45. *Baker v. Baker*, 78 Off. Gaz. 1427; *Baker v. Sanders*, 80 Off. Gaz. 1217. See *Pillsbury v. Pillsbury*, 64 Fed. 841; *Devlin v. Devlin*, 4 Hun 651.

began making chocolate goods and selling them as W. H. Baker & Co. He had no partner and dressed up his goods somewhat like plaintiff's. The plaintiff's goods were known as Baker's chocolate and confusion resulted, so that the defendant was enjoined from saying "& Company," from using the words "Established in Mercantile Business 1785," from using Baker or Baker's, without his initials, and was required to distinguish his goods clearly from those of Walter Baker & Co. In 1896, Wm. P. Baker <sup>46</sup> of New York began advertising Baker's or Wm. P. Baker's cocoa and was enjoined, being allowed only to say Cocoa made by Wm. P. Baker of New York. In 1899, Wm. H. Baker <sup>47</sup> of Syracuse was sued by Wm. H. Baker of Winchester, for issuing simulating circulars. He was enjoined and ordered to use his first name William in full and to give the town name, Syracuse, with his name. He incorporated the William H. Baker Co., called his goods the Justice Brand and the court refused further remedy. A firm containing a man named Allegretti <sup>48</sup> and trading in New York City as Allegretti & Co. was enjoined at the suit of a Chicago firm, the Allegretti Co., from using the name, without adding "No connection with the original Allegretti of Chicago." De Long's Hooks and Eyes <sup>49</sup> must not be made by a corporation, of which Oscar A. De Long is president, nor could the corporation be called the De Long Hook & Eye Co. as the name would indicate another maker, but Oscar A. De Long might use his own full name honestly with such goods. <sup>50</sup>

A man may not use a deceptive title with his name. Dr. J. D. Thomas, a dentist, had an office at 912 Walnut St. and restrained by suit a brother, D. S. Thomas, who opened an office at 905 Walnut St., from using the title Doctor, simulating signs and advertisements, and misrepresenting former connection with him. <sup>51</sup> The successor of the original Faber, who manufactured pencils, proved that the name had become a trade name of the article and the court held that no special right to use the name accrued by reason of re-

46. *Baker v. Baker*, 87 Fed. 209.

47. *Baker v. Baker*, 115 Fed. 297; *Baker v. Sanders*, 97 Fed. 948.

48. *Allegretti v. Keller*, 85 Fed. 643. See *Allegretti v. Allegretti*, 177 Ill. 129; *Allegretti v. Rubel*, 76 Ill. App. 581, 86 Ill. App. 600, 604.

49. *De Long v. De Long*, 39 N. Y. Supp. 903, 74 Off. Gaz. 809, 811.

50. So Stuart's Dyspepsia Tablets were enjoined. *Stuart v. Stuart*, 85 Fed. 778, 91 Fed. 243. See *Peltz v. Eichele*, 62 Mo. 171.

51. *Thomas v. Thomas*, 8 W. N. C. 375. The brother then studied dentistry and was relieved from the injunction as far as it prevented him from styling himself Doctor. See *Comstock v. Moore*, 18 How. Pr. 421.



lationship which others bore to him and that the defendant could not use the name, nor his initial, but must say Johann E. Faber, J. Eberhard Faber, or Eberhard Faber.<sup>52</sup> So Leopold Hoff, a nephew of Johann Hoff, the first maker of Malt Extract, must use his whole name prominently on his bottles.<sup>53</sup> Rudolph Standinger kept a restaurant at 116 Broadway, New York City, under his Christain name, Rudolph's, and his widow successfully prevented his brother, who had been a partner in the business, from opening a restaurant in the building adjacent, under the name of Rudolph's Brothers.<sup>54</sup> Frazer invented axle grease, which he called by his name, and, having sold the business, was not allowed later to defeat the right of his grantees and sell Superior Axle Grease—S. Frazer & Co.<sup>55</sup> The plaintiff was formerly named Trust and changed his name to Gourand.<sup>56</sup> His sons, whose names were not changed, were restrained from making a preparation with a name slightly changed from that made by their father and connecting that name with the words "Dr. T. F. Gourand's Sons." One Jung changed the spelling of his name to Young<sup>57</sup> and opened a business a block away from De Youngs, with simulating signs, calling himself The Youngs and was enjoined, not for changing the spelling of his name, but for perpetrating a fraud. Welcome A. Smith, a grocer, long sold Welcome Soap and then had a manufacturer make for him a soap of different appearance. On the label he placed his name, with the Christian name in much larger letters than the rest, and arranged so that it alone appeared at the end of the package. On complaint, he changed the label so that his whole name was in one line of the same sized type. The court said Smith was hardly sufficient to identify him and he might use his full name, but must not segregate his Christian name, place it in larger type, or so locate it as to admit the inference that he sold Welcome Soap.<sup>58</sup> A man named Royal sold Baking Powder, with a label similar to that of the Royal Baking Powder Co. and called it New Royal. He then changed the color of his label, and called the goods Maxim Baking Powder, but printed his name prominently on the cans (so that the

52. *Von Faber v. Faber*, 124 Fed. 603. See *Clark v. Armitage*, 67 Fed. 896, 76 Off. Gaz. 1419.

53. *Tarrant v. Hoff*, 78 Off. Gaz. 1607, 71 Fed. 163.

54. *Standinger v. Standinger*, 19 Leg. Int. 85.

55. *Frazer v. Frazer*, 9 West R. 763. See *Nolan v. Nolan*, 131 Cal. 271.

56. *Gourand v. Trust*, 3 Hun, 627.

57. *De Youngs v. Jung*, 25 N. Y. Supp. 479, 27 N. Y. Supp. 370.

58. *Lever v. Smith*, 112 Fed. 998.

name Royal sold his goods still) and was enjoined from such display on the front of his cans.<sup>59</sup> A certain prescription was so recommended by Capt. Storm to his friends<sup>60</sup> that the druggists who put it up called it Storm's Liver Regulator, in compliment to him, and then prevented Capt. Storm's son, who was not a druggist, from putting up a medicine after another formula, selling it as Storm's Liver Regulator and advertising that "this medicine is based on the original prescription prepared for Captain Adam Storm." The plaintiff in New York, carried on business for many years as "Arnheim the tailor," but had latterly dropped the phrase,<sup>61</sup> yet he prevented the defendant from using it with imitation of his (the plaintiff's) signs, boxes &c., as the name was unfamiliar in the city save as associated with him. Abraham Biningner<sup>62</sup> had an injunction against a former partner, Abraham B. Clark, who, with his son, opened a store next door to plaintiff's former store as A. Biningner Clark and Son, and advertised that they succeeded the old firm, and placed on the old store a sign, stating that they had removed to next door. Two men named De Grauw and Aymar<sup>63</sup> were not allowed with others to form a corporation, by the name of De Grauw, Aymar & Co., when there was an established business, carried on under that name by the survivor of the firm, who had bought the firm name. Two brothers, named Chickering, who were grandnephews of the original maker of the Chickering pianos, opened a piano manufactory as Chickering Bros.<sup>64</sup> and put Chickering on the fall board. They conveyed the idea, by their circulars, that their pianos were those long known, and said they were the sole living male representatives of the family, who originated the Chickering pianos, and made the only piano made by a Chickering.<sup>65</sup> At the suit of the successors of the original company, they were restrained from calling their pianos Chickering, or using that word, alone or with another word, as the name of a corporation, making pianos, or using the word on pianos, or circulars, unless they said "not original Chicker-

59. *Royal B. P. Co. v. Royal*, 122 Fed. 337. If his name was different, the display would prove his honesty. He offered to sell out to plaintiff which is evidence of fraudulent intent and he formerly made bicycles.

60. *Robinson v. Storm*, 52 S. W. 880.

61. *Arnheim v. Arnheim*, 59 N. Y. Supp. 948.

62. *Biningner v. Clark*, 60 Barb. 113.

63. *De Grauw v. Schmidt*, 56 N. Y. Supp. 593, 59 N. Y. Supp. 569.

64. *Chickering v. Chickering*, 120 Fed. 69. See *Wyckoff v. Howe*, 110 Fed. 520, 122 Fed. 348; *Rogers v. Rogers*, 11 Fed. 495; *Rogers v. Rogers*, 70 Fed. 1017, 73 Off. Gaz. 971.

65. Hopkinson piano could not be used, without distinctive word, by anyone but the original maker thereof. *Hopkinson Re.* 9 R. P. C. 102. See *Montreal Co. v. Sabastion*, (1899) A. C. 610.

ings," or "not connected with Chickering & Sons." They were also restrained from distributing a booklet, called "A Sketch of the Chickering family and their famous pianos." The fact that the defendant organized the plaintiff company and was the first to make the articles does not permit him so to use his name as to confound his articles with theirs.<sup>66</sup>

When a man has assigned his business to another, it was held in Maryland<sup>67</sup> that the assignment to use the name of the assignor was personal and could not be transferred to a third party, in the absence of express stipulation. Bagby and Rivers had been partners under that style and, when they dissolved the firm, it was agreed that Bagby might use the old name. Afterwards he formed the Bagby & Rivers Co. and sued Rivers, who had begun business under his own name. The court, however, not only upheld Rivers' right so to do, but enjoined the company from using Rivers' name. A distinction was made in New York between using the name of a corporation containing a man's name and using his name, and the Cutter Silk Manufacturing Co. was not restrained at the suit of Cutter, from using its name, but was restrained from placing the word Cutter on the ends of spools of cotton thread.<sup>68</sup>

One has exclusive right to the use of his name,<sup>69</sup> save as to those having the same name and may prevent his assignee from the unauthorized use of it on wagons, bill-heads, &c., in connection with the business. However, the courts of New York refused to enforce the right to the use of a man's name when he had made a general assignment and abandoned the use of it in trade for twenty-five years and the defendants had purchased the right to use the name from his assignees twenty years after the assignment.<sup>70</sup>

A man in many cases, especially when his name is peculiar, has lost the right to form a company bearing his name, if the name has been previously connected with a company with which the new organization competes. Thus the Van Aukens who had formed the

66. *Penberthy Co. v. Lee*, 78 N. W. 1074.

67. *Bagby v. Rivers*, 87 Md. 400.

68. *Cutter v. Gudebrod*, 61 N. Y. Supp. 225.

69. *Scherer v. Am. Ice Co.*, 66 N. Y. Supp. 3. Otherwise he would be liable to cost and vexation of suits brought against him and would suffer detriment should he later engage in the business.

70. *Bellows v. Bellows*, 53 N. Y. Supp. 853.

Van Auken Co., sold out and, with others, formed the Van Auken Specialty Co. They were enjoined from the use of the name;<sup>71</sup> and Lamb,<sup>72</sup> who invented a knitting machine and sold the rights of manufacturing it to the Lamb Manufacturing Co., whose rights were assigned to Lamb Knit Goods Co., had no right later to organize the Lamb Glove & Mitten Co. and engage in the same business in another small town in the same state. The business of both corporations was conducted chiefly through agents and the public had been deceived. The name of the former maker may have become a mere adjective of description and the successor to the business who purchased the right to use it may successfully defend it against the bearer of the name. Thus Oakes was not allowed even to place Peter Oakes on candy, for the reputation of the candy came not from his skill in making it, but from the ingredients.<sup>73</sup>

There are many cases in which a man has been restrained from an improper use of his name, when he has not taken steps which every honest man should take to prevent confusion of goods.<sup>74</sup> In England, a carpenter, named Warner, who bought the manufacture of Ashford's Gout and Rheumatic cure, and used his name with the goods, was restrained at the suit of the makers of Warner's Safe Cure.<sup>75</sup> So H. B. Kimpton and his wife H. L. Kimpton were restrained from carrying on business in medical books, under the name of H. Kimpton, and representing themselves as the successors of the man of that name who was H. B. Kimpton's father, and had carried on such business for many years a few doors from defendant's shop. The suit was brought by the trustee of H. Kimpton's widow.<sup>76</sup> J. Brinsmead & Sons made pianos<sup>77</sup> and T. E. Brinsmead and his two sons worked for them as mere mechanics. They later formed a corporation, under the name of T. E. Brinsmead & Sons and manufactured pianos but were

71. *Van Auken Co. v. Van Auken Specialty Co.*, 57 Ill. App. 240.

72. *Lamb v. Lamb*, 120 Mich. 159.

73. *Oakes v. Tonsmierre*, 49 Fed. 447. *Skinner v. Oakes*, 10 Mo. App. 45; *Probasco v. Bonyon*, 1 Mo. App. 241.

74. See *Norman v. Norman*, cited in 9 Ch. D. 560. A man named Cash might not advertise Cash's woven names, Cash's initials, nor Cash's frillings, for this use would mislead. *Cash v. Cash*, 19 R. P. C. 181, reversing 18 R. P. C. 213.

75. *Warner Re.*, 5 T. L. R. 327.

76. *Nicholls v. Kimpton*, 5 T. L. R. 674; *James v. James*, L. R. 13 Eq. 421. Robert Joseph James was compelled to use his full middle name in connection with the sale of horse blisters. There was dressing up here.

77. *Brinsmead Re.*, (1897) 1 Ch. 45, 406.

enjoined from using the word Brinsmead in such business, without adding the express statement that they were distinct from the old firm. *E. J. Jarman* was allowed to trade under his own name, but not as *Jarman & Co.*, or *Jarman & Jarman*, the plaintiff's business name.<sup>78</sup> *Valentine's Extract of Meat* was made by one process by the plaintiff and by another by the defendant. The latter was restrained from so doing,<sup>79</sup> or from forming the *Valentine Extract Co.*, which would be thought a company to deal in *Valentine's extract* rather than one merely formed by a *Valentine*. A firm was in business as *Brand & Co.*<sup>80</sup> A brother of one of the plaintiffs, who had been his clerk, went into the same business with *Mason* as *Brand & Mason*; suit followed but was compromised by the defendants' changing their name to *Mason & Brand*. Later *Brand* retired from the firm and *Mason* was enjoined from using the firm style, though he might transact business under his own name and state that he had been employed by *Brand & Co.* and had learned their methods. In *New South Wales*,<sup>81</sup> two brothers named *Taylor* were enjoined from trading as *Taylor & Co.*, at the suit of the successors of *Taylor Brothers*, by whom the defendants had been previously employed, or from using the name, *Taylor*, without an express statement that they were not connected with the plaintiff. *Dunlop* has been held in *England* to have become so associated with bicycle goods that a defendant was enjoined from such use, although he claimed to have formerly been in business with another *Dunlop* and to have bought out the right to use his name. The use would lead customers to believe that the goods were plaintiff's, or at least that they had their sanction, or were connected in some way with them.<sup>82</sup> Other cases involving license to use another name are: those in which a man who claimed to have bought from one *Brindle*<sup>83</sup> the right to mark watches with his name failed to enjoin another who sold watches bought from *Brindle* himself and marked with the name; and in which a man, who had in his employ a person named *Southorn*, was enjoined from advertising *Reynold's Purified Clay Pipes* made by *Southorn* from *Broseley*, at the suit of the maker of *Southorn's Broseley*

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78. *Townsend v. Jarmen*, 17 R. P. C. 649.

79. *Valentine v. Valentine*, 17 R. P. C. 673 reversing 17 R. P. C. 1.

80. *Dence v. Mason*, (1877) W. N. 23; (1878) W. N. 42.

81. *Pralten v. Peacock*, 20 N. S. W. L. R. Eq. 147.

82. *Dunlop Co. v. Dunlop Co.* 16 R. P. C. 12.

83. *Samuel v. Berger*, 4 Abb. Pr. 88.

Pipes.<sup>84</sup> Hallet sold Cumston the right to use his name on goods. After the latter's death, his son continued the business and the use of the name. Hallett protested and Cumston alleged he had bought the right to use the name from another Hallett, while the court held that Hallett could not maintain a suit, as he did not allege that Cumston used the name with intent to represent it as the plaintiff's and injure him.<sup>85</sup> Holbrook, employed by plaintiff, agreed that their Worcestershire Sauce should bear his name. Later he left them and sold the same right to another maker of the sauce. Both were enjoined, as Holbrook was not using his own name, but had sold it in gross to traders who wished to use it to pass off goods. He could not use it himself in connection with these goods, except by making a distinguishing addition to his own name.<sup>86</sup> Abel Morrall, needle makers for a century, bought Joseph Mogg & Co's. business in 1891 and used both names.<sup>87</sup> Another trader, who began business in 1893, bought four years later the business of Wm. Mogg, who made crochet hooks and packet needles. It appears that there are three grades in the manufacture of needles: (1) needle stampers who make the eye in the wire, (2) manufacturers in the plain, and (3) finishers who place the needles in small parcels and alone meet the public. After his sale, Wm. Mogg, continued his business without molestation from the purchaser thereof, which is evidence that the latter wished another name and not another business. In 1900, he bought from Jabez Yardly Morrall the name and the good will and stock in trade of a business for £36, of which only £4 belonged to the needle business, and used both names. Restraint against this use was decreed, as the purchases were only colorable devices to give one an appearance of right to use these names. The different initials were insufficient to distinguish the goods and, by using the surnames, the defendant might obtain trade intended for the plaintiff. Elias Howe patented sewing machines and gave licenses to a number of firms to use the patent.<sup>88</sup> One of these was Amasa B. Howe and when he sued another firm for using the word Howe, in which firm Elias Howe himself was the largest stockholder, the court held that though the plaintiff was a licensee and could not have manufactured his machines without using the patent, yet he could adopt and appropriate the name Howe to distin-

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84. *Southorn v. Reynolds*, 12 L. T. N. S. 75.

85. *Hallett v. Cumston*, 110 Mass. 29.

86. *Birmingham Co. v. Liverpool Co.*, 32 Sol. J. 559.

87. *Morrall v. Hessin*, 19 R. P. C. 557.

88. *Howe v. Howe*, 50 Barb. 236.

guish his machines from those of other licensees and could defend that use of the name, even against Elias Howe, who had no right to use it so as to deceive the public and deprive his licensee of the market his (the licensee's) machines had gained.

In the use of one's name one must not make a collateral misrepresentation which is descriptive.<sup>89</sup> The use of the term "& Company"<sup>90</sup> by one who had no partner is frowned on by the law, as is the word "Brothers" when defendant is alone in business.<sup>91</sup> It is unlawful to use a name like another's colorably<sup>92</sup> by obtaining license from another of that name. This is true, whether the license be from one whose name is like that of a person or a product. For example, the fact that the manufacturers of El Falco cigars took an assignment of the right to use that name from Mr. Falco did not prevent them from being enjoined from the use of the name,<sup>93</sup> at the suit of the manufacturers of El Falco cigars. So a man was enjoined who bought from one of his salesmen, L. B. Taylor, the right to use his name and under the name of L. B. Taylor & Co. sold hairpins, dressed up like the plaintiff's, which were also called Taylor's.<sup>94</sup> The successors or Talmey & Co., who kept the old sign over their door, though they had a different registered name, restrained Thompson and another for carrying on business as Thompson, Talmey & Co., though they alleged that Talmey was willing that they should use his name.<sup>95</sup> The successors of S. Howes' Co., which manufactured grain cleaners, had injunction against Howes' Grain Cleaner Co. which bought from Chas. H. Howes, an executor of S. Howes, the right to use his surname, which had never been used by a third party in that business.<sup>96</sup> The sale of needles under the name of D. Shrimpton Turvey and with his license was restrained at the suit of Shrimpton & Hooper,<sup>97</sup> and a tradesman was

89. *De Young v. Jung*, 25 N. Y. Supp. 479, 27 N. Y. Supp. 370.

90. *Lothrop v. Lothrop*, 47 How. Pr. 532; *Gravely v. Winchester*, Dig. 272 (defendant here fraudulently represented that he succeeded to plaintiff's business). *Fullwood v. Fullwood*, Dig. 421; *Campbell v. Hollins*, Dig. 548, at suit of Minton Hollins & Co. Robert Minton Taylor, formerly a partner in the firm, was restrained from adding "& Co." to his name, as he traded alone.

91. *Woolf v. Woolf*, 43 Sol. J. 127.

92. *Wolfe v. Barnett*, 24 La. Ann. 97; *Rogers v. Rogers*, 11 Fed. 495.

93. *Falk v. Am. Co.*, 73 N. Y. Supp. 547.

94. *Williams v. Brooks*, 50 Conn. 278.

95. *Pearks v. Thompson*, 18 R. P. C. 185.

96. *Howes v. Howes*, 52 N. Y. Supp. 468.

97. *Shrimpton v. Laight*, 18 Beav. 164.

enjoined from making Dr. Bull's Cough Syrup<sup>98</sup> at the suit of the original makers of the medicine of that name, though defendant had bought from a Dr. Bull the right so to use his name.

When a man's name is used in business merely because his name is like that under which the plaintiff's article has gained reputation, restraint follows, though the man whose name is used may be, at least ostensibly, a partner in the defendant organization. Thus *E. H. Gato*, who puts his name on cigar boxes,<sup>99</sup> succeeds in preventing the defendant from putting the name of his junior partner, *G. H. Gato*, on similar boxes. So *George A. Hires*<sup>100</sup> was formerly in business with the *Chas. E. Hires Co.*, but when the defendant company was formed, as *George A. Hires & Co.*, his name being used merely because of the fortuitous identity with plaintiff's, the law restrained the dressing up of defendant's packages like plaintiff's and the use of that name, which potently increased the conjoined force and effect of the other deceptive devices used by the defendant. So injunction was issued against the use of the name *Frank Chicory Co.*, in which *Frank* was a minority stockholder, and not the manager,<sup>101</sup> and against *A. S. Stonebreaker*<sup>102</sup> who, with a number of associates, started to sell *Stonebreaker's* medicines, a term associated by the public with the goods of his brother, *Henry Stonebreaker*, whose celebrity he tried to appropriate. Again, a tradesman was enjoined, at the suit of *Heinisch's Sons*, from putting on shears the name of *H. C. Heinisch*, from whom he had bought that right, and who agreed to impart any information he might have as to cutlery manufacture. He merely looked at samples of defendant's goods and said he was satisfied with them and considered them equal to the original *R. Heinisch's* articles.<sup>103</sup> No good will was bought with a going business, nor did *Heinisch* associate himself with the manufacturers by investing money, taking supervision, or actually exercising his skill in manufacturing the goods. *Garrett's Snuff* had obtained a wide reputation, which induced a company to call itself by the name of one *Garrett*, who

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98. *Meyer v. Bull*, 66 Off. Gaz. 1755.

99. *El Modelo Co. v. Gato*, 25 Fla. 886.

100. *Hires v. Hires*, 6 Pa. Dist. R. 285. See *Beal v. Chase*, 31 Mich. 490.

101. *Frank v. Frank*, 95 Fed. 818.

102. *Stonebraker v. Stonebraker*, 33 Md. 252. Defendant had made no medicine for seven years until just before the trial.

103. *Heinisch v. Boker*, 86 Fed 765. Labels also copied.



was a subordinate employee.<sup>104</sup> The court restrained this use of the name, as a wrongful attempt to appropriate the older business' good will.

The English cases speak to the same point. Thorley made Cattle Food.<sup>105</sup> After his death, his brother gives the receipt to a company, is employed by it and takes one of the 4000 shares of stock, but the company is called Thorley Cattle Food Co., and is promptly enjoined, when sued by the original company. Again the proprietor of Day & Martin's blacking obtained a preliminary injunction against one Day, an ironmonger's assistant, and Martin, a tobacconist, who formed a partnership to carry on the blacking business under the name of Day & Martin.<sup>106</sup> In another case,<sup>107</sup> the same plaintiff, though no one named either Day or Martin was left in the firm, enjoined two men named Day and Martin from simulating labels and using their names in a manner calculated to mislead the public and obtain at the expense of the plaintiff, a benefit to which they are not entitled in fair and honest dealing. In a similar case, the defendant, Atkins, had been in plaintiff's employ and set up in business in partnership with a man named Schweitzer and sold Otto Schweitzer & Atkins' Cacaotine. He was enjoined when sued by the proprietors of Schweitzer's Cacaotine.<sup>108</sup> So a company which had taken in a man named Dunlop, not before in the bicycle trade, was enjoined at the suit of the Dunlop Bicycle Co. from using the word Dunlop, in the manufacture of a contrivance to lessen the jar from riding over rough roads; and also in the manufacture of bicycles.<sup>109</sup> The defendant's circulars said they had no connection with the plaintiffs, but, in spite of this, the use of the name would deceive the public. In still another case,<sup>110</sup> the plaintiff sold cigarettes and refused to take in his brother as a partner. After having had a short experience as a clerk, the brother contracted with one Poulides to become manager of the Melachrino Egyptian Cigarette Co., took a store nearby, and put merely the word Melachrino on one sign. He was restrained by the court which held that he had sold his name to another for the purpose of carrying on a rival trade fraudulently.

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104. *Garrett v. Garrett*, 79 Off. Gaz. 1681.

105. *Massam v. Thorley*, 14 Ch. D. 748.

106. *Clayton v. Day*, 26 Sol. J. 43. They used simulating wrappers.

107. *Croft v. Day*, 7 Beav. 84.

108. *Schweitzer v. Atkins*, 37 L. J. Ch. 847.

109. *Dunlop v. Dunlop*, 40 Sol. J. 544.

110. *Melachrino v. Melachrino*, 4 R. P. C. 215.

As we have seen, a man may have the right to use his own name but not to transfer that right to a corporation. In other cases of the sort, *Mme. Tussaud & Sons, Ltd.*, secured an injunction against the registration of a new company as *Louis Tussaud Co., Ltd.*, of which company *Louis Tussaud* was to be the manager;<sup>111</sup> and *Otard Dupuy & Co.* restrained the *Otard de Montebello Cognac Co.* from using its name, though the *Marquise de Montebello nee Otard* formed the company and was the chief stockholder.<sup>112</sup>

In the Federal courts, it was held that two descendants of the inventor of the Remington typewriter had no right to become stockholders of a corporation which manufactured typewriters and have the name of the corporation changed to the *Remington Sholes Co.*, which might make the public believe that the defendant's product was a new style of the old machine. Even if they did not deceive the immediate purchasers, they put a constant temptation to middlemen to deceive ultimate purchasers.<sup>113</sup> If the name is used as part of a corporate name, it may not, in some cases, be used by another corporation, while the first one continues in business. In New York, *Charles S. Higgins*, who formed the *Charles S. Higgins Company* to make *Higgins' Soap*,<sup>114</sup> withdrew and formed the *Higgins Soap Co.* The latter company was forbidden to use the name, which was descriptive. It derived no additional immunity from the fact that one named *Higgins* was an incorporator. In a similar case in Connecticut,<sup>115</sup> the *Holmes, Booth, Haydens Company* was protected against the use by a rival company, in the same town, of the name *Homes, Booth & Atwood Manufacturing Company*.

It goes without saying that a man may, by contract, disable himself from the use of his name in a certain line of business.<sup>116</sup> Then he can not print his name on a periodical, if he be a publisher. Having permitted plaintiff to use his name with Christmas annuals, the defendant could not advertise that he would issue his usual Christ-

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111. *Tussaud v. Tussaud*, 44 Ch. D. 678.

112. *Otard v. Otard Co.*, 9 T. L. R. 295, 10 T. L. R. 67. There was no question as to her use of her name.

113. *Wyckoff v. Howe*, 110 Fed. 520, 122 Fed. 348. Cf. the *Manchester Brewing Case*. See *Int. Silver Co. v. Rogers*, 110 Fed. 955; *Rogers v. Int. Silver Co.*, 113 Fed. 526, 118 Fed. 133; *Rogers v. Rogers*, 70 Fed. 1017, 73 Off. Gaz. 970.

114. *Higgins v. Higgins*, 144 N. Y. 462.

115. *Holmes etc. v. Holmes etc.*, 37 Conn. 278.

116. *Ainsworth v. Bentley*, 14 W. R. 630.

mas annual,<sup>117</sup> nor lend the use of his name to a firm or a joint stock company,<sup>118</sup> nor, it may be, to use his name with the title "manager,"<sup>119</sup> nor to say he is the "same O'Connor who had to do with this valuable business,"<sup>120</sup> when he had covenanted not to say he was formerly connected with plaintiff. In an oft cited case, one John Douglas,<sup>121</sup> who sold out his rights in the business of John Douglas and then reopened a similar business, under the same name in the same place, employing the same clerks, was enjoined from using that name, as it would represent to the world that the identical business, whose good will he sold, was still carried on by him.<sup>122</sup> In Canada, the same prohibition is enforced, preventing a man to "derogate from his own grant."<sup>123</sup> A firm, of which Beatty was a member, manufactured copy books and called them Beatty's Head-line Copy Books. Afterwards, Beatty left the firm and prepared copy books for another trader, which books were called Beatty's New & Improved Head-line Copy Books, against which use injunction issued, as a purchaser, "unless thoroughly acquainted with both the works," would be satisfied that he received plaintiff's book, on being handed one of the defendant's.

The courts in the United States have not hesitated to enforce restrictive covenants by which a man has given up the right to use his own name.<sup>124</sup> On the other hand the brothers Fish<sup>125</sup> made wagons at Racine, Wisconsin, and sold their business to Fish Brothers Wagon Co. Later they organized, for the same business, the

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117. *Ward v. Beeton*, 23 W. R. 533. See *Ainsworth v. Bentley*, 14 W. R. 630.

118. *Rendle v. Rendle*, 63 L. T. N. S. 94.

119. *Dales v. Weaver*, 18 W. R. 993.

120. *Wolmershausen v. O'Connor*, 36 L. T. N. S. 921; *Vernon v. Hallam*, 34 Ch. D. 748.

121. *Churton v. Douglas*, 7 W. R. 365, 5 Jur. N. S. 887.

122. Distinguish this case from one where learned works are concerned. *Canada Pub. Co. v. Gage*, 11 Ont. A. R. 402; on app., 11 Can. S. C. R. 306.

123 See *Mossop v. Mason*, 17 Gr. U. C. Ch. 360, 18 Gr. U. C. Ch. 453.

124. *Richmond v. Richmond*, 52 Off. Gaz. 306. The right to use one's portrait follows the right to use one's name. *Richmond Nervine Co. v. Richmond*, 159 U. S. 293; *Lashur v. Chamberlain*, 6 Utah 385; *Williams v. Farrand*, 88 Mich 473; *Simmons v. Simmons*, 81 Fed. 163; *Chattanooga Medicine Co. v. Thedford*, 49 Fed. 949, 58 Fed. 347; 73 Off. Gaz. 2163; *Spieker v. Lash*, 102 Cal. 38.

125. *Fish Bros. v. Fish Bros.*, 87 Fed. 203, 95 Fed. 457; *Fish v. La Belle Works*, 82 Wis. 546, 52 N. W. 595.

Fish Brothers Manufacturing Co., with its factory in Iowa. It was held by the courts that the Fish Brothers, as originators of the wagon, could still manufacture it, call it the Fish Wagon, and use a business name, which indicated both that the trader was a successor to the parties who built up the Racine Works and the persons who previously made the wagons and from whom they derived their name. The rights of the Fish Brothers had also so passed to the assignees that the latter might call their article the Fish Wagon. In another case, Le Page, who had made liquid glue,<sup>126</sup> sold the Russia Cement Co., his business and trademarks and, afterwards, began to make the same article and call it by the same name. He was restrained by the courts, as Le Page's Glue was a trade name serving to distinguish the plaintiff's goods. The fact that Le Page called his new product Improved Liquid Glue was no sufficient defense, nor could he say "glue made by Le Page," nor did the later acquisition of a patent authorize him to stamp his name on the goods. A corporation, the Le Page Co., whose stockholders are Le Page, his wife, and his counsel, and in which Le Page is the active officer, stands in no better case, being a mere cover for him, and is also restrained. Le Page had so sold the right to use his own name in connection with glue as to deprive himself of the right to use it, and could not reclaim the right by misleading artifice. In Maine, the defendant John Winslow Jones,<sup>127</sup> formerly made Winslow's Green Corn after a process originated by Isaac Winslow, and sold the business to the plaintiff. Later he resumed business under his own name as successor of Nathan Winslow & Co., sold Winslow's Green Corn and issued circulars, denying the plaintiff's right to the name, but was enjoined from all such practices. So W. S. Payne, after he sold his business and good will to another tradesman,<sup>128</sup> was not allowed to carry on business under the old name W. S. Payne & Co., though he could as W. S. Payne. Again, a man, whose given name was Jacob and who sold ready made clothing, assigned his business and agreed not to use his name in commercial rivalry and was held strictly to the agreement, though the buyer of the business did not use the name.<sup>129</sup> When Dr. Chase agreed not to do business as Dr. Chase's Steam Printing House nor to sell Dr. Chase's recipes, he was enjoined from publishing any

126. *Russia Cement Co. v. Le Page*, 44 Off. Gaz. 823, 51 Fed. 941. See *Hazelton v. Hazelton*, 137 Ill. 231, 142 Ill. 494.

127. *Symonds v. Jones*, 82 Me. 302.

128. Nothing was said as to whether the plaintiff could use the old name, *Brass, etc. Works v. Payne*, 50 Ohio St. 115; *Burckhardt v. Burckhardt*, 36 Ohio St. 261; 42 Ohio St. 474.

129. *Grow v. Seligman*, 47 Mich. 607.

recipe book so connected with his name as to lead to the inference that it was intended to supersede the old one.<sup>130</sup>

The man who has voluntarily parted with the right to use his name can not recall it by carrying on business in his wife's name nor does she by marriage acquire a higher right to use his name than he had.<sup>131</sup> The maker of Halls' Vegetable Sicilian Hair Restorer sold the good will and business and agreed not to use his name in connection with similar articles and was enjoined from selling R. P. Hall's Improved Preparation for the Hair. Hall's name had for certain purposes a commercial value. If he estimates that value and sells it to another, he has no further right to use it for the purposes sold.<sup>132</sup> There is quite a remarkable group of cases in connection with the right to use the name Rogers<sup>133</sup> in connection with silverware and Rodgers with cutlery. Joseph Rodgers restrained John Rodgers & Sons from marking cutlery "Rodgers," but could not prevent them from marking it with the name of William Rodgers, one of the sons.<sup>134</sup> In the United States, three brothers Rogers were the first makers of electro-plated silverware and stamped their names on the goods.<sup>135</sup> A number of other persons, besides their successors, have stamped the name Rogers on silverware with varying success. Wm. A. Rogers was allowed to stamp goods with his full name and advertise them "Prices way below any Rogers goods in the market."<sup>136</sup> On the other hand, D. C. Rogers, his son, and two men named Spurr, were restrained, at the suit of Wm. Rogers & Son, from doing business as Rogers & Son. The defendant, Rogers, had never learned silver plating, but tried to deceive purchasers by using the name. Why was not the company called Spurr & Rogers, if the intent was honest competition?<sup>137</sup> So, when the defendant, who had worked for complainant as a salesman, but not as a manufacturer, organized a corporation, The R. W.

130. *Beal v. Chase*, 31 Mich. 491. Defendant was not allowed to withdraw post office order directing that letters addressed to him without residence or private box number or word "personal" be delivered to plaintiff. See *Kennedy v. Kennedy*, 55 N. Y. Supp. 917.

131. *Skinner v. Oakes*, 10 Mo. App. 45.

132. *Ayer v. Hall*, 3 Brewst. 509.

133. See *Rogers v. Rogers*, 53 Conn. 121; *Goodman v. Meriden Co.*, 50 Conn. 139.

134. Defendant falsely used V. R. & Crown. Plaintiff was cutter to the queen, Victoria. *Rodgers v. Nowill*, 6 Hare, 325, 17 Jur. N. S. 171. Nowill employed defendant Rodgers.

135. *Int. Silver Co. v. Rogers*, 110 Fed. 955.

136. *Rogers v. Rogers*, 70 Fed. 1019. See *Rogers v. Simpson*, 54 Conn. 527.

137. *Rogers v. Rogers & Spurr*, 11 Fed. 495.

Rogers Co., taking one-quarter interest therein for the use of his name, he was enjoined from using the name and was not allowed to put Rogers on goods.<sup>138</sup> A border line case, in which there was no restraint, was one in which defendant advertised his full name with technically accurate description, saying also "Our goods are Rogers goods."<sup>139</sup> Two sons<sup>140</sup> of one of the original Rogers brothers, one of whom was a farmer, and the other had been employed in the silver plating business as a laborer at \$2.50 a day, with a first cousin and two of his brothers-in-law, who had been long with plaintiff, organized Simeon L. & Geo. H. Rogers Co., and, on their wrappers, advertisements and labels, stated that they "were the only real Rogers Brothers" and that their goods were the "real Rogers goods." This was clearly designed to impress the public with the idea that the defendant succeeded to the original firm; and was prohibited by law, as was also the marking goods by defendant with Rogers, or Rogers Brothers, with or without symbols or initials. The name was selected from the benefit of the name Rogers and not from any benefit accruing from the services of the brothers, who held about one-eighth of the stock. Another Rogers, who was a bank clerk and never had been a silver plater, with two men who had been in plaintiff's service, formed the Wm. G. Rogers Co., of which he took five per cent of the stock and was made president. The Wm. Rogers Mfg. Co. sued them and secured a restraint from their stamping their name or that of their president on their goods.<sup>141</sup>

Bernard C. Steiner.

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138. *Wm. Rogers v. Rogers*, 73 Off. Gaz. 970, 70 Fed. 1017.

139. *Rogers v. Rogers*, 84 Fed. 639.

140. *Int. Silver Co. v. Rogers*, 110 Fed. 955; *Meriden Co. v. Parker*, 39 Conn. 450. Plaintiff rightfully marked goods "1847 Rogers Bros." Defendant bought from other Rogers the right to stamp goods "C. Rogers Bros. A. 1., and was enjoined, not from using Rogers alone but from using *Rogers Bros.*

141. *Int. Silver Co. v. Rogers*, 113 Fed. 526, 118 Fed. 133.